

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2021-____-C

IN RE:

Joint Application of Charter Fiberlink SC-CCO, LLC)
and Time Warner Cable Information Services (South)
Carolina), LLC for Limited Designation as Eligible)
Telecommunications Carriers to Receive Rural)
Digital Opportunity Fund Auction (Auction 904))
Support for Voice and Broadband Services and))
Request for Expedited Consideration.)
_____)

PROTECTIVE ORDER

INTRODUCTION

On January 5, 2021, Charter Fiberlink SC-CCO, LLC and Time Warner Cable Information Services (South Carolina), LLC (each individually, a “Charter Entity” and collectively, the “Charter Entities”) filed a joint application for eligible telecommunications carrier (“ETC”) and Motion for Protective Order with the Commission requesting strict protection of the Confidential Version of the Joint Application on grounds that disclosure of same may violate Federal Communication Commission (“FCC”) rules, regulations, and orders governing Rural Digital Opportunity Fund Auction (Auction 904) (“RDOF Auction”) applicants, and would also harm the Charter Entities’ ability to compete in the marketplace by disclosing trade secret and commercially sensitive information.

FINDINGS OF FACTS

1. CCO Holdings, LLC (“CCO Holdings”), an affiliate of the Charter Entities, was selected as a winning bidder in South Carolina under the FCC’s RDOF Auction¹ and assigned

¹ See *Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes; Winning Bidders*

portions of its winning bid to each of the Charter Entities. The purpose of the RDOF Auction is to target billions of dollars in federal funding to census blocks throughout the United States currently unserved by minimum 25/3 Mbps broadband services.

2. Each Charter Entity's receipt of RDOF Auction funding is conditioned upon it obtaining designation as an eligible telecommunications carrier ("ETC") in its respective RDOF Census Blocks.² Accordingly, each Charter Entity seeks ETC designation in the RDOF Census Blocks in South Carolina for which it was awarded funding from the RDOF Auction.

3. The Charter Entities represent that public disclosure of data and information contained in Exhibit H of the Confidential Version of the Joint Application may violate federal law relating to RDOF Auction applicants, and further represent that the information sought to be protected by their Motion for Protective Order constitutes trade secrets and commercially sensitive information, the disclosure of which would harm the Charter Entities' ability to compete in the marketplace.

APPLICABLE LAW

4. Data and information contained in an application filed with the Commission is not available for public inspection where "specifically exempted by statute or Commission order." S.C. Code Ann. Regs. 103-804.S.(2).

5. The South Carolina Freedom of Information Act, S.C. Code Ann. §§ 30-4-10, *et seq.*, ("FOIA") exempts from public disclosure data or information restricted from disclosure under federal laws. *See* S.C. Code Ann. § 30-4-30(A) (providing that a "person has a right to inspect, copy, or receive ... any public record of a public body, *except as otherwise provided by*

Announced; FCC Form 683 Due January 29, 2021, Public Notice, DA 20-1422 (Dec. 7, 2020) ("Auction 904 Results Notice").

² *See Auction 904 Results Notice*, at ¶ 36.

...*federal laws*”) (emphasis added). FOIA likewise exempts from public disclosure trade secrets. *See* S.C. Code Ann. § 30-4-40(a)(1). And the South Carolina Rules of Civil Procedure also provide protections for trade secret information. *See* SCRCP 26(c) (providing that a court may order “that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way”).

6. FCC rules, regulations, and orders governing RDOF Auction applicants prohibit certain auction-related communications relating to bids and bidding strategies and post market structure.³ *See* 47 C.F.R. § 1.21002. The FCC interprets the scope of its prohibited communications rule broadly.⁴ Prohibited communications are not limited to direct communications between RDOF Auction applicants, but also “includes *public disclosures* as well as private communications and indirect or implicit communications.”⁵

7. Violations of FCC prohibited communications rules may jeopardize an RDOF Auction applicant’s deployment of awarded federal funds to targeted census blocks. *See, e.g.*, 47 CFR § 1.2109(d) (providing that violations of prohibited communications rules may result in, among other sanctions, an applicant forfeiting its “full bid amount” and being banned from participating in FCC auctions).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

8. The Commission has reviewed the Confidential Version of the Joint Application,

³ *See also Public Notice, Rural Digital Opportunity Fund Phase I Auction Scheduled for October 29, 2020, Notice and Filing Requirements and Other Procedures for Auction 904*, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, FCC 20-77 (rel. Jun. 11, 2020) (*Filing Requirements and Procedures Notice*) at ¶¶ 152, 154.

⁴ *See Public Notice, Rural Digital Opportunity Fund Phase I Auction (Auction 904) Closes, Winning Bidders Announces, FCC Form 683 Due January 29, 2021*, AU Docket No. 20-34, WC Docket No. 19-126, WC Docket No. 10-90, DA 20-1422 (rel. Dec. 7, 2020) (*Winning Bidder Notice*) at ¶ 34 (detailing subject matter covered by FCC prohibited communications rules).

⁵ *Filing Requirements and Procedures Notice* at ¶ 149 (emphasis added).

and in particular, Exhibit H attached thereto, and concludes that certain data and information contained therein may violate FCC prohibited communications rules if publicly disclosed, whether directly or indirectly, or produced to a party-intervenor in this proceeding.

9. Violation of FCC prohibited communication rules may jeopardize the deployment of tens of millions of dollars in awarded federal funds to census blocks in the State of South Carolina that are currently unserved with 25/3 Mbps broadband service. The delay or loss of RDOF Auction funding tied to an FCC prohibited communications infraction may significantly impair the Charter Entities' ability to timely deliver high-quality broadband services to unserved residences and businesses throughout the state.

10. The Commission further finds that the information contained in Exhibit H of the Confidential Version of the Joint Application constitutes trade secrets and commercially sensitive information, the disclosure of which would cause harm to the Charter Entities and inhibit their ability to compete in the marketplace.

11. Data and information contained in Exhibit H of the Confidential Version of the Joint Application restricted from public disclosure pursuant to applicable FCC rules, regulations, and orders relating to prohibited communications is exempt from public disclosure under this state's FOIA laws, as is trade secret information.

12. Based on the foregoing, the Commission finds it appropriate and consistent with the public interest to strictly protect the Confidential Version of the Joint Application from public disclosure, whether directly or indirectly, to any person or entity whatsoever and from production to any party-intervenor in this proceeding.

13. Such strict protection shall be in full force and effect unless or until the Charter Entities provide written notice that this information should no longer be protected; or upon

subsequent order by this Commission finding that disclosure of this information is necessary in order to prosecute this proceeding, is in the public interest, and will not result in a violation of FCC rules, regulations, or orders relating to prohibited communications by RDOF Auction applicants, and will not harm the Charter Entities by disclosing trade secret or other commercially sensitive information.

14. Prompt notice and opportunity to be heard should be given to the Charter Entities in the event the Confidential Version of the Joint Application is the subject of a state FOIA request, subpoena, or judicial order seeking production or disclosure of same.

ORDERING PROVISIONS

IT IS THEREFORE ORDERED THAT:

A. The Confidential Version of the Joint Application shall not be publicly disclosed, whether directly or indirectly, to any person or entity whatsoever.

B. The Confidential Version of the Joint Application shall not be disclosed or produced to any party-intervenor in this proceeding.

C. Nothing herein shall prohibit the Charter Entities from disclosing the Confidential Version of the Joint Application to a state or federal governmental entity, party to this proceeding, or other third-party pursuant to an appropriate confidentiality agreement, and such disclosure shall not constitute disclosure in the public domain.

D. The Charter Entities shall be provided with prompt notice in the event the Confidential Version of the Joint Application is the subject of a state FOIA request, subpoena, judicial order, or any other inquiry whatsoever seeking production or disclosure thereof.

E. This protective order shall remain in full force and effect unless or until the Charter Entities provide written notice that the information protected by this order should no longer be

protected; or upon subsequent order by this Commission finding that such disclosure is necessary to prosecute this proceeding, is in the public interest, and will not result in a violation of FCC rules, regulations, or orders relating to prohibited communications by RDOF Auction applicants, and will not harm the Charter Entities by disclosing trade secret or other commercially sensitive information.

BY ORDER OF THE COMMISSION:

Justin T. Williams, Esq., Chairman

ATTEST:

Florence P. Besler, Vice Chair